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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/978,475	10/16/2001	Kenneth Rose	M-11446 US	5139
33031	7590	01/30/2006	EXAMINER	
CAMPBELL STEPHENSON ASCOLESE, LLP 4807 SPICEWOOD SPRINGS RD. BLDG. 4, SUITE 201 AUSTIN, TX 78759			TANG, KAREN C	
			ART UNIT	PAPER NUMBER
			2151	

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/978,475	ROSE ET AL.	
	Examiner	Art Unit	
	Karen C. Tang	2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1/12/06</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

***Response to Arguments***

Applicant's arguments, see page 10, filed 11/3/05, with respect to Claims 1 and 18 have been fully considered and are persuasive. The rejection of Claims 1-27 has been withdrawn.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 7 are unclear and ambiguous to Examiner, but due to the examining purpose, Examiner has decided to go with the Independence Claim 1, which, "the second period time is subsequent to the first period of time".

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Aimoto et al (US 6,147,997) hereinafter Aimoto.

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1. Referring to Claims 1, and 18, Aimoto disclosed a transmitting device transmitting data at a first non-zero rate to a memory for storage (FIFO) therein during a first period of time (the rate must be non-zero to transfer information before the adjustment due to the congestion, refer to Col 13, and Col 14, and Col 6, and Col 9, Lines 35-55);

the transmitting device transmitting data at a second non-zero rate to the memory for storage therein during a second period of time; wherein the second period of time is subsequent to the first period of time and wherein the second non-zero rate is greater than or less than the first non-zero rate (refer to Col 13, Lines 50-67 and Col 14, Lines 1-20).

2. Referring to Claims 2, 11, 19, and 25, Aimoto disclosed wherein the memory device comprises a FIFO buffer (refer to Col 14, Lines 19-25):

3. Referring to Claims 3, 12, 20, and 26, Aimoto disclosed wherein the transmitting device is contained in a switching fabric, wherein the memory is contained in a line card coupled to the switching fabric via a data link (refer to Fig 1, where the switch circuit 105 is connected via data link to the memory/FIFO, which the memory is within the controller/line card, 107), and wherein the transmitter transmits data via the data link to the memory for storage therein (refer to 100 in Fig 16 and Fig 15).

4. Referring to Claims 4 and 21, Aimoto disclosed a transmit signal (refer to Col 9, Lines 52-56); first rate and second rate (first rate is the initial rate right after the connection established,

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the second rate is the rate that being modified, Col 13, Lines 50-67, and Col 14, Lines 1-20); and a memory device (refer to Col 14, Lines 19-25);

generating a rate control signal (refer to Col 13-14); and transmitting the rate control signal to the transmitting device to instruct the transmitting device to stop transmitting data at the first non-zero rate and start transmitting data at the second non-zero rate (refer to Col 14, Lines 25-36); transmitting the rate control signal to the transmitting device, wherein the transmitting device stops transmitting data to the memory device at the first data rate and starts transmitting data to the memory device at the second data rate in response to the transmitting device receiving the rate control signal (refer to Col 13, Lines 50-67, and Col 14, Lines 1-36).

5. Referring to Claims 5, 13, 22, and 27, Aimoto disclosed generating first data quality value representing a quantity of data stored in the memory device at a first point in time; comparing the first data quality value to a first predetermined value (refer to Col 7, Lines 35-55 and Col 11, and 12);

wherein the rate control signal is generated in response to comparing the first data quantity value to the first predetermined value (refer to Col 7, Lines 35-55, and Col 11, and Col 12).

6. Referring to Claims 6 and 23, Aimoto disclosed comparing the first data quantity value to a plurality of determined values, wherein the first predetermined value is one of the plurality of first predetermined values (refer to Col 11 and Col 12, Lines 1-45);

wherein the rate control signal is generated in response to comparing the first quantity value to the plurality of predetermined values (refer to Col 11 and Col 12).

7. Referring to Claims 7 and 15, Aimoto disclosed generating second data quantity the reduced rate is the comprises the second data quantity (counting up quantity is the second data quantity, refer to Col 11, and Col 12);

compare first data quantity value to the second data quantity value (refer to Col 11, Col 12);

the rate control signal is generated if the first data quantity value is not equal to the second data quantity value (refer to Col 11 and Col 12).

8. Referring to Claim 8, Aimoto disclosed generating total data input count at the first point in time, wherein the total data input count represents a quantity of data input to the memory during a period of time ending in the first point in time (refer to Col 11, Lines 15-45);

generating total data output count at the first point in time, wherein the total data output count represents a quantity of data output from the memory device during the period of time ending in the first point in time (refer to Col 11, Lines 15-45);

subtracting the total data output count from total data input count (Col 11, Lines 60-67 and Col 12, lines 1-46).

9. Referring to Claims 9 and 17, Aimoto disclosed wherein the second non-zero rate is greater than the first non-zero rate if the second data quantity value is less than the first data quantity value, and wherein the second non-zero rate is less than the first non-zero rate if the second data quantity value is less than the first data quantity value (refer to Col 11, Lines 15-25 and Col 13, Lines 50-67 and Col 14, Lines 1-55).

10. Referring to Claim 14, Aimoto disclosed a plurality of comparing circuits, each one of which is configured to compare the first data quantity value to a respective one of a plurality of predetermined values (refer to Col 11, Lines 5-62), wherein the first comparing circuit is one of the plurality of comparing circuits, and wherein the first predetermined value is one of the plurality of first predetermined values (refer to Col 11, Lines 5-62 and Col 13, Lines 25-50);

11. Referring to Claim 16, Aimoto disclosed wherein the first and second circuits are the same circuits (refer to Col 9, Lines 9-20).

12. Referring to Claims 10 and 24, Aimoto disclosed a memory device configured to receive data from a transmitting device for storage therein (refer to Col 9, Lines 25-67, Col 10, Lines 30-56, and Col 11, Lines 1-62);

a circuit configured to generate and transmit a rate control signal instructing the transmitting device to stop transmitting data to the memory device at a first nonzero rate and to begin transmitting data to the memory device at a second nonzero rate (refer to Col 13 Lines 25-67 and Col 14, Lines 1-35);

wherein the second non-zero rate is greater than or less than the first non-zero rate (refer to Col 14, Lines 19-25).

### ***Conclusion***

A shortened statutory period for reply to this Office action is set to expire THREE MONTHS from the mailing date of this action.

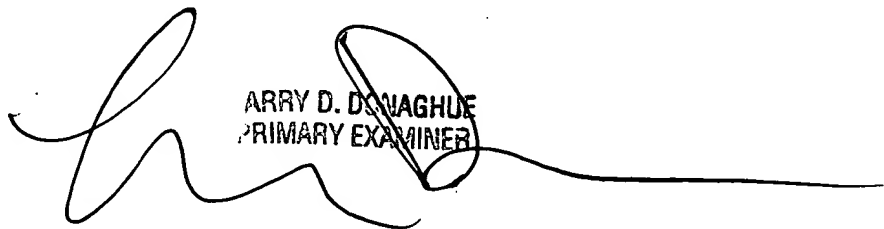
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karen C. Tang whose telephone number is (571)272-3116. The examiner can normally be reached on M-F 7 - 3.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on (571)272-3939. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KT

A handwritten signature in black ink, appearing to read 'Barry D. Donaghue', is written over a rectangular stamp. The signature is fluid and cursive, with a long horizontal line extending to the right. The stamp is partially obscured by the signature.

ARRY D. DONAGHUE  
PRIMARY EXAMINER